

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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BRIAN L. FRECHETTE,

Plaintiff,

v.

AMERIQUEST MORTGAGE COMPANY  
and DEUTSCHE BANK NATIONAL  
TRUST COMPANY, as TRUSTEE of  
AMERIQUEST MORTGAGE  
SECURITIES, INC., ASSET BACKED  
PASS-THROUGH CERTIFICATES,  
SERIES 2003-11 UNDER THE POOLING  
AND SERVICING AGREEMENT DATED  
AS OF NOVEMBER 1, 2003, WITHOUT  
RECOURSE

Defendants.

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CIVIL ACTION NO. 05-11398-RWZ

**DECLARATION OF LISA CAVIN**

I, Lisa Cavin, hereby declare under oath as follows:

1. I am employed by Defendant Amerquest Mortgage Company ("Amerquest") as a Team Lead, Customer Resolution, in Amerquest's offices located at 1100 Town & Country Road, Suite 1200, Orange, CA 92868.

2. I make this declaration in connection with, and in support of Amerquest Mortgage Company's ("Amerquest") and Deutsche Bank National Trust Company, as Trustee of Amerquest Mortgage Securities, Inc. Asset Backed Pass-Through Certificates, Series 2003-11 Under the Pooling and Servicing Agreement Dated as of November 1, 2003, Without Recourse's ("Deutsche Bank, as Trustee") Motion for Summary Judgment and Incorporated Memorandum of Law.

3. I am competent to testify to the facts set forth below based on my personal

knowledge or my review of Ameriquest's business records.

4. On or about October 1, 2003, plaintiff entered into a thirty-year adjustable rate mortgage with Ameriquest with a principal amount owed by plaintiff of \$543,750.00. Plaintiff's loan note has an initial interest rate of 11.500%, which is also the minimum rate. Plaintiff's loan note calls for monthly payments of \$5,384.71 beginning December 1, 2003. A true and accurate copy of plaintiff's note is attached hereto as Exhibit A.

5. Following the closing, Ameriquest assigned plaintiff's note and mortgage to Deutsche Bank National Trust Company, as Trustee.

6. In connection with the closing of his mortgage loan, plaintiff received and executed a Truth in Lending Disclosure Statement. A true and accurate copy of the Truth in Lending Disclosure Statement is attached hereto as Exhibit B.

7. The Truth in Lending Disclosure Statement disclosed a finance charge in the amount of \$1,412.417.24, and the amount financed in an amount of \$526,077.32.

8. In connection with the closing of his mortgage loan, plaintiff received and executed a HUD-1 Settlement Statement. A true and accurate copy of the HUD-1 Settlement Statement is attached hereto as Exhibit C.

9. The HUD-1 Settlement Statement listed the various fees and charges incurred by plaintiff in connection with this mortgage loan with Ameriquest, including the pre-paid fees included in the finance charge calculation.

10. The chart below, based upon the fees listed on the HUD-1 Settlement Statement executed by plaintiff sets forth each of the pre-paid fees, interest and expenses that comprise the finance charge disclosed to the plaintiff in connection with his mortgage loan:

<u>Description</u>	<u>Amount</u>
Loan Discount 2.000% to Ameriquest Mortgage Company	\$10,875.00
Tax Related Service Fee to Ameriquest Mortgage Company	\$70.00
Flood Search Fee to Ameriquest Mortgage Company	\$16.00
Lenders Processing Fee to Ameriquest Mortgage Company	\$626.00
Admin to Ameriquest Mortgage Company	\$239.00
Application Fee to Ameriquest Mortgage Company	\$360.00
Interest from 10/8/03 to 11/1/03 Ameriquest Mortgage Company	\$4,111.68
Settlement or closing fee to The Law Offices of George Crowley	\$300.00
Settlement/Disbursement fee to The Law Offices of George Crowley	\$750.00
Escrow Fee to The Law Offices of George Crowley	\$295.00
Courier Fee	\$30.00
	<b>Total:</b>
	<b>\$17,672.68</b>

11. Here, as set forth above, the disclosed pre-paid finance charge of \$17,672.68, which is calculated as the principal amount of the loan (\$543,750.00), less the amount financed (\$526,077.32) as stated on the borrower's Truth-in-Lending Disclosure Statement.

12. I understand from plaintiff's complaint that plaintiff alleges that four specific charges (together totaling \$2,007) were improperly excluded from finance charge disclosed on the TIL statement. According to plaintiff, the four charges are: (1) \$1,345 in fees paid to closing counsel, (2) \$25 for city/county tax/stamps, (3) \$90 for alleged title insurance discrepancies, and (4) \$547 in overcharges for Ameriquest's alleged failure to obtain a renewal discount on plaintiff's title insurance premium.

13. Plaintiff argues that the \$1,345 in settlement-related fees paid to Attorney Crowley were improperly excluded from the Truth in Lending Disclosure Statement. This \$1,345 in fees to Attorney Crowley are comprised of (1) a settlement or closing fee in the amount of \$300 (HUD-1 Settlement Statement line 1101), (2) a settlement/disbursement fee in

the amount of \$750 (HUD-1 Settlement Statement line 1111), and (3) an escrow fee in the amount of \$295 (HUD-1 Settlement Statement line 1112).

14. These fees were disclosed in their entirety and included in the calculation of the finance charges even though they are excludable under TILA and the CCCDA. While Ameriquest disclosed \$17,672.68 in total pre-paid finance charges, in fact, all that Ameriquest was required to disclose was \$16,327.68 in total pre-paid finance charges. As a result, Ameriquest over-estimated the amount of the finance charge by at least \$1,345.

15. Ameriquest never received a Chapter 93A demand letter from the plaintiff. Upon information and belief, Deutsche Bank, as Trustee never received a demand letter from plaintiff.

16. Plaintiff never propounded any discovery on Ameriquest. Plaintiff never propounded any discovery requests on Deutsche Bank, as Trustee. Upon information and belief, plaintiff never propounded any discovery requests on any third party. Likewise, plaintiff did not take any depositions or designate an expert witness.

17. Ameriquest and Deutsche Bank, as Trustee did not receive documentation from plaintiff to substantiate his claim for an insurance rate discount during discovery or during the time established by the Court Order of June 1, 2006.

18. Plaintiff has not made a payment on the loan since September 2004.

19. Plaintiff has not paid his residential real estate taxes for approximately three years.

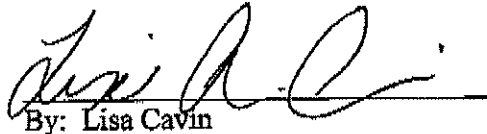
20. Because plaintiff had failed to make a mortgage payment since September 2004, Deutsche Bank National Trust Company, as Trustee filed a Complaint on January 28, 2005 for authority to foreclose plaintiff's mortgage with the Land Court, Commonwealth of Massachusetts, Case No. 305627.

21. On April 21, 2005, plaintiff notified Deutsche Bank National Trust Company, as Trustee that he was purportedly rescinding his mortgage transaction. A true and accurate copy of plaintiff's April 21, 2005 letter is attached hereto as Exhibit D.

22. On April 26, 2005, Ameriquest wrote to plaintiff and acknowledged receipt of plaintiff's April 21, 2005 letter. A true and accurate copy of Ameriquest's April 26, 2005 letter is attached hereto as Exhibit E.

23. On May 18, 2005, Ameriquest wrote to plaintiff and denied his claim for rescission. A true and accurate copy of Ameriquest's May 18, 2005 letter is attached hereto as Exhibit F.

I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING  
IS TRUE AND CORRECT. EXECUTED THIS 23TH DAY OF AUGUST, 2006 AT  
ORANGE, CALIFORNIA.

A handwritten signature in black ink, appearing to read "Lisa Cavin", written over a horizontal line.

By: Lisa Cavin

Title: Team Lead, Customer Resolution

**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed on August 25, 2006 through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 25, 2006.

John T. Landry, III  
Glynn, Landry, Harrington & Rice, LLP  
10 Forbes Road  
Braintree, MA 02184-2605

Michael J. Powers  
Powers Law Offices, P.C.  
91 Gloucester Road  
Westwood, MA 02090

/s/ Phoebe S. Winder

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Phoebe S. Winder

# **EXHIBIT A**



Loan Number: 0059193128 - 5789

**ADJUSTABLE RATE NOTE**  
(LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

October 1, 2003  
[Date]Orange  
[City]CA  
[State]74 Washington Street, SHERBORN, MA 01770  
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$543,750.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Amerquest Mortgage Company.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 11.500%. This interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on December 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on November 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make payments at: 505 City Parkway West, Suite 100, Orange, CA 92668

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$5,384.71. This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. INTEREST RATE AND MONTHLY PAYMENT CHANGES****(A) Change Dates**

The interest rate I will pay may change on the first day of November, 2005, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the date 45 days before the Change Date is called the "Current Index."

If at any point in time the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and one-half percentage point(s) ( 6.500 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

1 of 3

Loan Number: 0059193128 - 5789

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 13.500 % or less than 11.500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One percentage point(s) (1.000 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 17.500 % or less than 11.500 %.

**(E) Effective Date of Changes**

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

**(F) Notice of Changes**

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

**5. BORROWER'S RIGHT TO PREPAY**

I may repay this loan at any time as provided in this paragraph. If I repay this loan within the first Three (3) year(s) of the date of the execution of this Note, I agree to pay a prepayment penalty, subject to the following conditions:

- 1) If I repay this loan within the first year by refinancing with another lender, I will pay a penalty equal to the sum of: (a) the lesser of three (3) months interest or the remainder of the first years interest; plus (b) three (3) months additional interest.
- 2) If I repay this loan within the first year by any other means, I will pay a penalty equal to the lesser of three (3) months interest or the remainder of the first years interest.
- 3) If I repay this loan within the second or third year by refinancing with another lender, I will pay a penalty equal to three (3) months interest.

**6. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces the principal, the reduction will be treated as a partial prepayment.

**7. BORROWER'S FAILURE TO PAY AS REQUIRED****(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 3.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is delivered or mailed to me.

**(D) No Waiver by Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

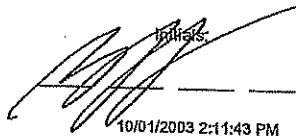
**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**8. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given notice of that different address.

  
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Loan Number: 0050103128 - 5789

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**10. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**11. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition, to the protections given to the Note Holder under this Note, A Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. That the Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without the Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition of Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which the Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**12. GOVERNING LAW PROVISION**

This Note and the related Security Interest are governed by Federal and State law applicable to the jurisdiction of the Property.

Oral agreements, promises or commitments to lend money, extend credit, or forbear from enforcing repayment of a debt, including promises to extend, modify, renew or waive such debt, are not enforceable. This written agreement contains all the terms the Borrower(s) and the Lender have agreed to. Any subsequent agreement between us regarding this Note or the instrument which secures this Note, must be in a signed writing to be legally enforceable.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Borrower Brian L. Frechette

Borrower

Borrower

Borrower

# **EXHIBIT B**

**TRUTH-IN-LENDING DISCLOSURE STATEMENT**  
**(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)**

Mortgage Lenders License - License Number ML0702  
 LENDER: Ameriquest Mortgage Company  
 1 Apple Hill DR., Box 8118  
 Natick, MA 01760  
 (508)655-1119

☐ Preliminary

☒ Final

Borrowers: Brian L. Frechette

Broker License:

Type of Loan: ADJUSTABLE RATE  
 Date: October 1, 2003

Address: 74 Washington Street  
 City/State/Zip: SHERBORN, MA 01770

Loan Number: 0059193128 - 5789

Property: 74 Washington Street, SHERBORN, MA 01770

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate. 11.830 %		<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. \$ 1,412,417.24		<b>Amount Financed</b> The amount of credit provided to you or on your behalf. \$ 526,077.32		<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled. \$ 1,938,494.56	
YOUR PAYMENT SCHEDULE WILL BE:							
NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING	NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE MONTHLY BEGINNING		
359	\$5,384.71	12/01/2003					
1	\$5,383.67	11/01/2033					
<b>VARIABLE RATE FEATURE:</b> <input checked="" type="checkbox"/> Your loan has a variable rate feature. Disclosures about the variable rate feature have been provided to you earlier.							
<b>SECURITY:</b> You are giving a security interest in the property located at: 74 Washington Street, SHERBORN, MA 01770							
<b>ASSUMPTION:</b> Someone buying this property <input checked="" type="checkbox"/> cannot assume the remaining balance due under original terms. <input type="checkbox"/> may assume, subject to lender's conditions, the remaining balance due under original terms.							
<b>PROPERTY INSURANCE:</b> You may obtain property insurance from anyone you want that is acceptable to Ameriquest Mortgage Company							
<b>LATE CHARGES:</b> If a payment is late, you will be charged 3.000% of the overdue principal and interest payment.							
<b>PREPAYMENT:</b> If you pay off your loan early, you <input checked="" type="checkbox"/> may <input type="checkbox"/> will not have to pay a penalty. See your contract documents for any additional information regarding non-payment, default, required repayment in full before the scheduled date, and prepayment refunds and penalties.							

I/We hereby acknowledge reading and receiving a complete copy of this disclosure.

Borrower: Brian L. Frechette

Date

Borrower

Date

Borrower

Date

Borrower

Date

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# **EXHIBIT C**



**Settlement Statement**  
**Optional Form for**  
**Transactions without Sellers**

 Name & Address of Borrower:  
 Brian L. Frechette

 U.S. Department of Housing  
 and Urban Development

 OMB Approval No. 2502-0491  
 WLI

74 Washington Street SHERBORN, MA 01770

Property Location: (if different from above)

74 Washington Street, SHERBORN, MA 01770

 Name & Address of Lender:  
 Ameriquest Mortgage Company  
 1 Apple Hill DR., Box 8118  
 Natick, MA 01760

 Settlement Agent:  
 CROWLEY, ESQ., GEORGE T.

Place of Settlement: 63 SHORE ROAD WINCHESTER, MA 01690

**L. Settlement Charges**
**800. Items Payable in Connection with Loan**

801. Loan origination fee % to \$10,875.00

802. Loan discount 2.000 % to Ameriquest Mortgage Company \$10,875.00

803. Appraisal/Prop Val to Burke Appraisals \$300.00

804. Credit report to

805. Inspection fee to

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808. Yield Spread Premium to

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810. Tax Related Service Fee to Ameriquest Mortgage \$70.00

811. Flood Search Fee to Ameriquest Mortgage Company \$15.00

812. Lenders Processing Fee to Ameriquest Mortgage \$626.00

813. Admin to Ameriquest Mortgage Company \$239.00

814. Doc. Prep. Fee to

815. Credit Report Fee to

816. Origination Fee % to

817. Application Fee to Ameriquest Mortgage Company \$360.00

818. Underwriting Fee to

819. Service Provider Fee to

820. Processing Fee to

821. Underwriting Fee to

822. Appraisal Fee to

**900. Items Required by Lender to be Paid in Advance**

901. Interest from 10/08/2003 to 11/01/2003 @ \$171.32 per day \$4,111.68

902. Mortgage Insurance premium for months to

903. Hazard Ins prem to \$0.00

904. Flood Ins prem to

**1000. Reserves Deposited with Lender**

1001. Hazard Insurance months @ \$ per month

1002. Mortgage Insurance months @ \$ per month

1003. Earthquake Ins months @ \$ per month

1004. County prop. taxes months @ \$ per month

1005. Annual assess. months @ \$ per month

1006. Flood months @ \$ per month

1007. Windstorm Ins months @ \$ per month

1008.

**1100. Title Charges**

1101. Settlement or closing fee to The Law Offices of \$300.00

1102. Abstract or file search to

1103. Title examination to

1104. Title Insurance binder to

1105. Document preparation to

1106. Notary fees to

1107. Attorney's fees to

1108. Title Insurance to The Law Offices of George Crowley \$1,450.00

1109. Lender's coverage \$

1110. Owner's coverage \$

1111. Settlement/Disbursement fee to The Law Offices of \$750.00

1112. Escrow Fee to The Law Offices of George Crowley \$295.00

**1200. Government Recording and Transfer Charges**

1201. Recording fees \$315.00

1202. City/county tax/fees \$25.00

1203. State tax/ stamps

1204. State specific fee

1205. State specific fee

**1300. Additional Settlement Charges**

1301. Demand to

1302. Pest inspection to

1303. Survey Fee \$50.00

1304. Staff Appraiser Fee

1305. Reconveyance Fee to

1306.

1307. Property Val Fee to

1308. Courier Fee \$30.00

1400. Total Settlement Charges (enter on line 1502) \$19,812.68

Borrower's Signature:

Approved for Funding By:

Approved:

Branch: Natick, MA 01760

Mortgage Lenders License - License Number ML0702

Loan Number:

0059193128 - 5769

Settlement Date: Estimated

10/08/2003

**M. Disbursement to Others**

1501. HLD BANK (W) \$299.00

1502. DISCOVER FINANCIAL S (W) \$311.00

1503. PROVIDENTBANK (W) \$466,532.08

1504. PROVIDIAN FINANCIAL (W) \$814.00

1505. SOVEREIGN BANK (W) \$1,917.00

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1520. TOTAL DISBURSED (enter on line 1503) \$469,873.08

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AMC-Frechette 00030

# **EXHIBIT D**





## ***POWERS LAW OFFICES, P.C.***

91 Gloucester Road, Westwood, Massachusetts 02090  
781-326-7766 (Tel) 781-326-7788 (Fax) 617-471-2000 (Cell)

**MICHAEL J. POWERS, ESQUIRE**  
bicoastal@comcast.net

April 21, 2005

**Original By Certified Mail**  
(No. 7004 2890 0001 4725 5572)  
**Return Receipt Requested**  
**Copy by Facsimile Transmission**  
(978-256-7615), & USPS Next Day

Victor Manougian, Esquire  
Korde & Associates, P.C.  
321 Billerica Road, Suite 210  
Chelmsford, MA 01824

**RE: Borrower: Brian L. Frechette**  
**Lender: Ameriquist Mortgage Company**  
**Assignee: Deutsche Bank National Trust Company, as Trustee**  
**Loan: \$543,750 Refinance Mortgage Loan dated October 1, 2003**  
**Property: 74 Washington Street, Sherborn, MA 01770**  
**Mortgage: Middlesex South Registry of Deeds, Book 41251, Page 76**  
**Case No.: 305627 (Land Court)**

Dear Attorney Manougian:

As you are aware, I, along with Attorney John T. Landry, III, of Glynn, Landry, Harrington & Rice, LLP, represent Brian L. Frechette ("Mr. Frechette") relative to the mortgage foreclosure proceeding commenced by your office on behalf of Deutsche Bank National Trust Company, as Trustee of Ameriquist Mortgage Securities Inc., Asset Backed Pass-Through Certificates, Series 2003-11 under the Pooling and Servicing Agreement dated as of November 1, 2003 ("Deutsche Bank"). Because the refinancing transaction that Mr. Frechette entered into on October 1, 2003, with Ameriquist Mortgage Company ("Ameriquist") involved several violations of the Massachusetts Truth In Lending Act (M.G.L. c.140D, §1 et seq.) ("TILA"), our client has authorized us to rescind the transaction pursuant to M.G.L. c.140D, §10, and the Massachusetts Banking Commissioner's Regulations promulgated thereunder, 209 CMR 32.23.

The following brief synopsis of the facts and law which outlines Mr. Frechette's right to rescind incorporates citations to the federal Truth In Lending Act (15 USC §1601, et. seq.), the Federal Reserve Board Regulations promulgated thereunder (12 CFR §226.1 et. seq., "Regulation Z"); the Official Staff Commentary of the Federal Reserve Board; and relevant federal case law. As the

Victor Manougian, Esquire

April 21, 2005

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Massachusetts TILA and regulations are identical to the federal statutory and regulatory scheme in all substantive aspects, the state courts are guided by this federal law in interpreting the cognate provisions of state law. Therefore, although reference is made to federal law throughout this letter for illustrative purposes, the rescission claim and all other claims made herein are solely grounded in state law.

#### **Bases For Exercise of Right of Rescission**

The TILA violation which gives rise to Mr. Frechette's right to rescind the Ameriquest mortgage loan transaction includes, but is not limited to, Ameriquest's failure to disclose the correct finance charge. Mr. Frechette hereby expressly reserve the right to allege additional TILA violations in the event the same are ascertained either in the course of additional investigation or analysis of the circumstances surrounding and the disclosures made in connection with the consummation of the Ameriquest mortgage loan transaction or ascertained through discovery in the event the resolution of this matter involves litigation.

The TILA violations currently known to Mr. Frechette involve charges that were not bona fide and reasonable and, accordingly, these charges should have been disclosed as components of the finance charge at the time of the consummation of the Ameriquest mortgage loan transaction. By failing to disclose the following charges as components of the finance charge, Ameriquest violated Regulation Z, §226.4(c)(7), and 209 CMR 32.4(c)(7). (All of the following charges are shown on the copy of the HUD-1 Settlement Statement relative to Mr. Frechette's refinance mortgage loan with Ameriquest attached to this correspondence as Exhibit "A").

- A. *\$90.00 Undisclosed Finance Charge Based On Failure To Properly Calculate Title Insurance Premium.* According to line 1108 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged \$1,450.00 for lender's title insurance coverage in the amount of \$543,750. According to the copy of the Fidelity National Title Insurance Company of New York ("Fidelity") Loan Policy Number 5412-3231241 issued in connection with Mr. Frechette's Ameriquest mortgage loan, the actual premium paid was \$1,360.00 (a copy of Schedule A to said loan policy attached hereto as Exhibit "B"). Accordingly, the \$90.00 overcharge constitutes an undisclosed finance charge.
- B. *\$547.00 Undisclosed Finance Charge Based On Failure To Provide Refinance Loan "Discount" On Title Insurance Premium.* At the time of the issuance of Ameriquest's loan policy of title insurance, Fidelity's published premium rate schedule also provided that in the case of a refinance loan if a policy has been issued insuring the mortgage being refinanced, then the new premium may be 60% of the current premium. To the extent that the new loan amount exceeded the old loan amount, then additional premium at the full rate should be collected for the excess amount. A policy had in fact been issued in connection with the

Victor Manougian, Esquire  
 April 21, 2005  
 Page 3

\$456,400 first mortgage loan with New Century Mortgage Corporation being refinanced by Mr. Frechette. Accordingly, Mr. Frechette should have been charged only \$740.00 for the required lender's policy of title insurance, calculated as follows:

\$684.60 Premium on first \$456,400 of coverage x 60% of \$2.50 rate/\$1,000  
\$218.40 Premium on remaining \$87,350 at \$2.50 rate/\$1,000  
 \$903.00 Premium reflecting appropriate discount

Failure to provide Mr. Frechette with the available discount resulted in a title insurance premium overcharge of \$547.00, which overcharge constitutes an undisclosed finance charge.

- C. *\$65.00 Undisclosed Finance Charge Based on Recording Fees Overcharge.* According to line 1201 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged recording fees in the amount of \$315.00. However, an examination of the public records of the Middlesex South Registry of Deeds indicates that only \$250.00 in recording fees were paid in connection with the (i) the recording of Ameriquest's mortgage (\$175.00) and (ii) the recording of a discharge (\$75.00). To the extent that the remaining \$65.00 in recording fees collected from Mr. Frechette were in fact not paid to public officials, the same represents an undisclosed finance charge. See *Mayo v. Key Financial Services, Inc.*, 424 Mass. 862 (1997).
- D. *\$25.00 Undisclosed Finance Charge Based on "City/County Tax/Stamps" Fee Overcharge.* According to line 1202 of the Ameriquest HUD-1 Settlement Statement, Mr. Frechette was charged \$25.00 for "City/County Tax/Stamps." There is no record of any tax or stamps being paid in connection with the consummation of Mr. Frechette's mortgage loan transaction with Ameriquest. To the extent that the \$25.00 in tax/stamps collected from Mr. Frechette were in fact not paid to public officials, the same represents an undisclosed finance charge.
- F. *Excessive portion of Attorney Closing Fees Overcharge.* According to lines 1101 and 1111 of the Ameriquest HUD-1 Settlement Statement, the closing attorney handling Mr. Frechette's Ameriquest refinance mortgage loan transaction charged Mr. Frechette a \$300.00 "settlement or closing fee" and a \$750.00 "settlement/disbursement" fee, for a total of \$1,050.00 in "settlement" legal fees. In addition, the \$295.00 charged for an "escrow fee" referenced on line 1112 of the Settlement Statement is merely disguised as a separate cost in order to make the aggregate "settlement" legal fees charged appear lower. The aggregate \$1,345.00 legal fee charged for closing Mr. Frechette's mortgage loan far exceeds the range of charges normally imposed by experienced lender's counsel on loans of this type. As such, the excessive portion is an undisclosed finance charge.

Victor Manoungian, Esquire

April 21, 2005

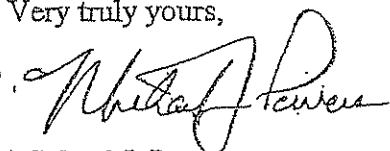
Page 4

In summary, Ameriquest failed to disclose an aggregate of \$727.00 in actual finance charges that were paid by Mr. Frechette and failed to disclose the excessive portion of the legal fees paid by Mr. Frechette to Ameriquest's closing attorney. These failures constitute a violation of Regulation Z, §226.18(d) and 209 CMR 32.18(d) in amounts exceeding TILA's error tolerance for material disclosures (i.e. \$35.00 error tolerance applicable in foreclosure defense context). Further, this failure to make required material disclosures tolls Mr. Frechette's rescission rights until the earlier of Deutsche Bank's provision of rescission right notices with corrected material disclosures, or the passage of four years subsequent to consummation of the transaction. G.L. c.140D, §10, 209 CMR 32.23(a)(3). Cf., 15 USC 1635, Regulation Z, §226.23(a)(3). Deutsche Bank has not provided Mr. Frechette with rescission notices accompanied by the required corrected material disclosures. Further, it has only been approximately one year and eight months since the consummation of the Ameriquest mortgage loan transaction. Accordingly, Mr. Frechette is entitled at this time to rescind the Ameriquest mortgage loan transaction pursuant to the extended rescission rights provided for by TILA.

#### Demand For Relief

As a result of this rescission notice, Deutsche Bank's security interest is void (209 CMR 32.23(d)(1); Regulation Z, §226.23(d)(1)) and Deutsche Bank is bound to immediately terminate such security interest. 209 CMR 32.23(d)(2); Regulation Z, §226.23(d)(2). In addition, Deutsche Bank has twenty (20) days from its receipt of this notice to return to Mr. Frechette all monies paid in connection with the terms of the Ameriquest mortgage loan. *Id.* Failure to cancel the security interest and return to Mr. Frechette all monies due may subject Deutsche Bank to actual and statutory damages, pursuant to G.L. c.140D, §32, as well as multiple damages for corresponding violations of c.93A. *See*, G.L. c.140D, §34. **Finally, demand is made to immediately suspend all collection proceedings being instituted against Mr. Frechette including but not limited to the foreclosure sale of the subject property scheduled for 2:00 p.m. on Monday, April 25, 2005.**

Very truly yours,



Michael J. Powers

Enclosures

cc: Brian L. Frechette (w/copies of encls. - by first class mail)

Paul Irwin, Esquire (w/copies of encls. - by fax and first class mail)

John T. Landry, III, Esquire (w/copies of encls. - by fax and first class mail)

The Jumpp Company, Inc. (w/copies of encls. - by fax and first class mail)

Deutsche Bank National Trust Company, as Trustee (w/copies of encls. - by Certified Mail,

No. 704 2540 000, Return Receipt Requested at: 1761 Andrews Place, Santa Ana, CA 92705)

47255589

(East Street,



Oct-08-03 12:31pm From: AMERIQUEST MORTGAGE/NATICK  
Transactions without Sellers and Urban Development

+508-855-7588

T-506 P-004/005 F-0

Name & Address of Borrower:  
Brian L. Franchelle

Name & Address of Lender:  
Ameriquest Mortgage Company  
1 Apple Hill Dr., Box 8118  
Natick, MA 01760

74 Washington Street, SHERBORN, MA 01770  
Property Location: (if different from above)

74 Washington Street, SHERBORN, MA 01770

Settlement Agent:  
CROWLEY, ESQ., GEORGE T.

Place of Settlement: 63 SHORE ROAD WINCHESTER, MA 01890

**L Settlement Charges**

800. Items Payable in Connection with Loan	Loan Number: 0059183126 - 5789	Settlement Date: 10/08/2003
801. Loan origination fee \$ to	M. Disbursement to Others	
802. Loan discount 2.000 % to Ameriquest Mortgage Company	\$10,875.00	
803. Appraiser Val to Burke Appraisals "L \$150.00" \$0.00	\$300.00	
804. Credit report to	1501. HLD BANK (W)	\$299.00
805. Inspection fee to	1502. DISCOVER FINANCIAL S (W)	\$311.00
806.	1503. PROVIDENTBANK (W)	\$466,532.08
807.	1504. PROVIDIAN FINANCIAL (W)	\$814.00
808. Yield Spread Premium to	1505. SOVEREIGN BANK (W)	\$1,917.00
809.	1506.	
810. Tax Related Service Fee to Ameriquest Mortgage	1507.	
811. Flood Search Fee to Ameriquest Mortgage Company	1508.	
812. Lender's Processing Fee to Ameriquest Mortgage	1509.	
813. Admin to Ameriquest Mortgage Company	1510.	
814. Doc. Prep. Fee to	1511.	
815. Credit Report Fee to	1512.	
816. Origination Fee % to	1513.	
817. Application Fee to Ameriquest Mortgage Company	1514.	
818. Underwriting Fee to	1515.	
819. Service Provider Fee to	1520. TOTAL DISBURSED (enter on line 1603)	\$468,073.08
820. Processing Fee to	Total Wire: \$527,162.32	
821. Underwriting Fee to	Deposit of Escrow/Title: \$0.00	
822. Appraisal Fee to	Subordinate Financing: \$0.00	
900. Items Required by Lender to be Paid in Advance	L = Lender Paid	
901. Interest from 10/08/2003 to 11/01/2003 @ \$17.22 per day		
902. Mortgage Insurance premium for months to		
903. Hazard Ins prem to		
904. Flood Ins prem to		
1000. Reserves Deposited with Lender		
1001. Hazard Insurance months @ \$ per month		
1002. Mortgage Insurance months @ \$ per month		
1003. Earthquake Ins months @ \$ per month		
1004. County prop. taxes months @ \$ per month		
1005. Annual assess. months @ \$ per month		
1006. Flood months @ \$ per month		
1007. Windstorm Ins months @ \$ per month		
1008.		
1100. Title Charges		
1101. Settlement or closing fee to The Law Offices of		
1102. Abstract or title search to		
1103. Title examination to		
1104. Title Insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to		
1108. Title Insurance to The Law Offices of George Crowley		
1109. Lender's coverage \$		
1110. Owner's coverage \$		
1111. Settlement/Disbursement fee to The Law Offices of		
1112. Escrow Fee to The Law Offices of George Crowley		
1200. Government Recording and Transfer Charges		
1201. Recording fee		
1202. City/county tax/stamps		
1203. State tax stamps		
1204. State specific fee		
1205. State specific fee		
1300. Additional Settlement Charges		
1301. Demand to		
1302. Post inspection to		
1303. Survey Fee		
1304. Staff Appraiser Fee		
1305. Reconveyance Fee to		
1306.		
1307. Property Val Fee to		
1308. Courier Fee		
1400. Total Settlement Charges (enter on line 1602)	\$19,812.68	

Borrower(s) Signature(s):

X

Approved for Funding By: Chris Jenkins

Approved:

Branch: Natick, MA 01760

Mortgage Lenders License - License Number MLD702

SCHEDULE A  
LOAN FORM

OFFICE FILE NO. 2006182

OWNERS	POLICY NUMBER	DATE OF POLICY @	AMOUNT OF INSURANCE	PREMIUM
JAN	5412-3231241	10/9/2003 @ 2:16 PM	\$543,750.00	\$1,360.00

1. Name of Insured:

Amerquest Mortgage Company, its successor and/or assigns, ATIMA

2. The estate or interest referred to herein is at Date of Policy vested in:

Brian L. Frechette

3. The estate or interest in land described in this Schedule and which is encumbered by the insured mortgage is :

Fee Simple.

4. The Mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

Mortgage from Brian L. Frechette to Amerquest Mortgage Company, dated 9/23/2003, securing the original principal amount of \$543,750.00 and recorded with the Middlesex County Registry of Deeds on 10/9/2003 at 2:16 PM as Instrument No. 1279.

5. The land referred to in this policy is located at 74 Washington Street, in the City/Town of Sherborn, County of Middlesex, State of Massachusetts, and is described as set forth in Exhibit A attached hereto and made a part hereof.

Countersigned

By: George T. Crowley  
Authorized Signatory  
George T. Crowley

# **EXHIBIT E**



AMERIQUEST®  
MORTGAGE COMPANY

April 26, 2005

Via First Class U.S. Mail

Michael Powers  
Powers Law Offices, P.C.  
91 Gloucester Road  
Westwood, MA 02090

Re:    *Borrower(s):*                      *Brian Frechette*  
         *Ameriquest Loan Number:*        *0059193128*  
         *Property Address:*                *74 Washington Street*  
            *Sherborn, MA 01770*

Dear Mr. Powers:

This letter is to acknowledge receipt of your correspondence dated April 21, 2005, regarding the loan referenced above.

Ameriquest Mortgage Company strives to provide you with the utmost attention in resolving your concerns. We will research the matters contained in your correspondence and provide a response upon completion of our investigation.

Please note that the foreclosure sale that was originally scheduled for April 25, 2005 has been postponed until June 7, 2005, pending resolution of this matter.

On behalf of Ameriquest Mortgage Company, we would like to thank you for bringing this matter to our attention.

Sincerely,

Ameriquest Mortgage Company





# **EXHIBIT F**



May 18, 2005

Via Federal Express

Michael Powers  
Powers Law Offices, P.C.  
91 Gloucester Road  
Westwood, MA 02090

Re:    *Borrower(s):*                      *Brian Frechette*  
      *Ameriquet Loan Number:*        *0059193128*  
      *Property Address:*                *74 Washington Street*  
    *Sherborn, MA 01770*

Dear Mr. Powers:

We are writing in response to your letter requesting rescission of the above referenced loan pursuant to the Federal Truth In Lending Act (TILA). After careful review, we respectfully reject your claim that in making the loan to your client Ameriquet violated TILA, and accordingly deny your request for rescission. Below is our response to your inquiries regarding the charges on your client's HUD Settlement Statement (HUD):

Title Insurance

We have confirmed with the Law Office of George Crowley, closing agent for this loan that although the premium for your client's Fidelity National Title Insurance (Fidelity National) policy was reflected as being \$1,450.00 on the HUD, it was in fact \$1,360.00. Please accept the \$90.00 difference which is included in the enclosed check issued by Crowley's office to your client.

Title Insurance Reissuance Rate

You indicated that title insurance had been issued in connection with your client's prior mortgage with New Century Mortgage Corporation. Fidelity National has confirmed that they would have charged a refinance reissuance amount of \$816.00 (at the rate of \$1.50 per \$1,000 of the loan amount) had your client submitted a copy of their previous title insurance policy as proof of eligibility for such rate. They do not have records indicating that any proof was submitted, and your client is welcome to submit a copy of his prior policy to Fidelity National to determine his eligibility for a refund.

Recording Fee

Although the HUD shows that the recording fees were \$315.00, the actual amount paid to Middlesex County was \$325.00 and is broken down as follows: \$175.00 mortgage recording; \$75.00 discharge of Provident Bank mortgage; \$75.00 discharge of mortgage from Brian L.



Frechette to Gregory Frechette and Gene Christopher Frechette (see enclosure). The overcharge of \$10.00 in recording fees was absorbed by Crowley's office.

City / County Tax / Stamps Fee

The amount of \$25.00 was paid to the county for a municipal lien certificate to verify whether any outstanding taxes were owed. George Crowley's office has refunded this fee as an accommodation, the amount of which has also been included in the enclosed check.

Settlement or Closing / Disbursement Fee

A settlement or closing fee is charged when a third party such as The Law Office of George Crowley performs the closing duties. A settlement disbursement fee was charged by them for their disbursement of the loan funds at settlement. Please note that Ameriquest does not dictate the amounts charged by third parties, and we are unable to respond to any allegations that such fees are unreasonable without further evidence that the charges are not in conformity with the standard market rate for such services.

Along with the check from the Law Office of George Crowley in the amount of \$115.00 (including \$90.00 title insurance refund plus the \$25.00 municipal lien certificate fee), we are also enclosing the final disbursement ledger, HUD and settlement invoice as provided by Crowley's office.

We trust that the above responds to your concerns.

Sincerely,



Ann Tran  
Counsel  
Ameriquest Mortgage Company

Encls.

CAMBRIDGE TRUST COMPANY  
CAMBRIDGE, MA

53-59/113-

5/17/2005

\*\*115.00

One Hundred Fifteen and 00/100 \*\*\*\*\*  
DOLLARS

*John J. Carr*

74 Washington Street, Sherborn

006367 10113005951 91040601

SECURITY FEATURES INCLUDED. DETAILS ON BACK

THE UNIVERSITY OF CHICAGO PRESS